

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                           |   |                          |
|---------------------------|---|--------------------------|
| ANTHONY SMITH,            | ) |                          |
|                           | ) |                          |
| Plaintiff,                | ) |                          |
|                           | ) |                          |
| v.                        | ) | CIVIL ACTION NO 07-1397  |
|                           | ) |                          |
|                           | ) | Magistrate Judge Caiazza |
| JOY FLOWERS CONTI, et al. | ) |                          |
|                           | ) |                          |
| Defendant.                | ) |                          |

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

It is respectfully recommended that the Plaintiff's application for leave to proceed in forma pauperis (Docket #1) be denied and that this action be dismissed, without prejudice.

**II. REPORT**

The Plaintiff, Anthony Smith (Smith), an inmate confined under judgment of sentence at the Luzerne County Jail, Wilkes-Barre, Pennsylvania, filed this lawsuit under the Civil Rights Act of 1871, 42 U.S.C. §1983, against Joy Flowers Conti and others, the Defendants. Together with the complaint, the Plaintiff filed an application for leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1996, 28 U.S.C. §1915(b) as amended April 26, 1996, requires that prisoners who cannot pay the full filing fee immediately, submit an initial partial filing fee and the balance in installment payments. Consistent with that Act, the court entered an Order (Docket #2) on October 18, 2007, which directed the Plaintiff to submit a certified copy of

his institutional account statement from every jail or prison in which he was confined, showing the status of that account or accounts, from May 1, 2007 through the date that the account statement is submitted, by November 9, 2007.

To this date, the Plaintiff has not submitted a six month institutional account statement. Because the court will not direct the prison to withdraw money from the Plaintiff's institutional account and pay it into the court until the Plaintiff authorizes a withdrawal, the initial partial filing fee in this case will never be paid.

The Plaintiff's refusal to comply with the directions which appear in the court's October 18, 2007 order makes it impossible for the court to comply with Congress' amendments to the law regulating the manner in which in forma pauperis prison litigation is to be administered. Because the Plaintiff has not complied with the previous order, the court must conclude that Smith no longer desires to maintain this action.

Wherefore, it is respectfully recommended that the Plaintiff's application to proceed in forma pauperis be denied and that this action be dismissed, without prejudice.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by November 29, 2007.

November 13, 2007

s/Francis X. Caiazza

FRANCIS X. CAIAZZA

UNITED STATE MAGISTRATE JUDGE

cc:

ANTHONY SMITH, 07-09-107

Luzerne Couty Correctional Facility

99 Water Street

Wilkes-Barre, PA 18702